

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1288 OF 1998

Sandesh Liladhar Kadrekar .. Petitioner

Versus

State of Maharashtra .. Respondent

Petitioner in person

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th September 2006.

5th October 2006.

ORAL JUDGEMENT:

. The petitioner has challenged by this petition under article 227 of the Constitution of India, the judgement and order dated 23rd January 1998 delivered by the Sessions Court, Ratnagiri

in Criminal Revision Application No.35 of 1997 and the judgement and order dated 5th April 1997 by Additional Sessions Judge, Ratnagiri in Regular Criminal Case No.71 of 1993.

2. Petitioner is original accused in this criminal case. The charge against the petitioner is that he has committed offence punishable under section 324, 504 and 506 of I.P.C. Learned Judicial Magistrate has held that the petitioner is guilty of these offences but considering that he was conducting the case personally and at the relevant time was aged 26 years, all that the learned Magistrate did was to impose upon him a fine of Rs.50 and in default to suffer simple imprisonment for 10 days. This was the conviction and sentence for both offences viz., under section 324 and 506 of I.P.C.

3. Before me also, the petitioner accused has appeared in person and contended that the

learned Judicial Magistrate has denied him fair opportunity to represent himself and put forward his defence. The petitioner submits that he was handicapped as he was appearing in person. He filed three applications during the course of trial on 31st March 1997 wherein, he prayed for diverse directions to the prosecution as also to give him a fair opportunity to lead evidence. These applications were rejected on 31st March 1997 and the order of conviction and sentence was delivered on 5th April 1997. In such circumstances, the trial court has proceeded with undue haste resulting in miscarriage of justice.

4. Apart from this, his submission is that the entire prosecution story is vexatious and bogus. The first informant Deepti has not been examined. Her version was crucial inasmuch as it is, she who was allegedly aggrieved. However, she has not been examined. Further, the courts below have overlooked very material discrepancies

and inconsistencies in the version of the prosecution witnesses. He submits that if the prosecution story is to be believed, then, the husband of Deepti, complainant Dilip Ramchandra Bhatkar has his office opposite the residence of petitioner. They are not on visiting terms and whenever Dilip was on tour, petitioner used to abuse, pelt stones on his bungalow and make gestures by standing on the road in front of the bungalow. He submits that if such was the incident, it was necessary to produce the previous complaint. He submits that there is absolutely no evidence either documentary or oral which would show that window panes have been broken by pelting stones. He submits that even the spot where the incident allegedly took place on 9th April 1993, has not been identified. The panchanama is also not proved in accordance with law. All witnesses examined by the prosecution were interested and thus fair opportunity was denied to petitioner accused. He also assails

the findings of revisional court which confirms judgement of the learned Magistrate on the ground that the revisional court ought to have gone into all aspects including relevant legal provisions and satisfied itself as to whether the Judgement of conviction and sentence is legal, valid and proper. The revisional court having failed to discharge its duty, its order is also vitiated and this petition, therefore, deserves to be allowed. Rule be made absolute by quashing and setting aside both orders.

5. On the other hand, learned A.P.P. submits that this is a petition under Article 227 of the Constitution of India. This Court is not a court of facts and all findings of facts are binding upon it. Further, this is not a court of appeal either. She submits that the writ jurisdiction is restricted and limited in nature. This Court cannot come to a different conclusion on the same materials merely because in its

opinion that is possible. Once, courts below have consistent with the materials produced recorded findings of fact, then the same are not liable to be interfered by this Court in its jurisdiction under Article 227 of the Constitution of India which is supervisory, extraordinary and discretionary.

6. She further submits that the manner in which the entire matter has been conducted by the petitioner accused would demonstrate that he does not deny the basic and fundamental ingredients which would go to constitute an offence punishable under section 324 and 506 of I.P.C. He does not deny the fact that he is residing in the vicinity of the premises of the complainant. He does not further deny the fact that an incident indeed took place. The manner in which the cross examination was conducted by him would show that he does not dispute his presence at the relevant time on the spot. He does not deny that

injuries were caused and that the stone pelting incident took place. She has taken me through the deposition of the relevant and material witnesses and has contended that the findings are consistent with the versions which have withstood the cross examination at the hands of the petitioner accused. She submits that all witnesses have deposed about the participation of the petitioner in the incident and the weapon which was utilised for inflicting injuries. She submits that this is not a fit case, therefore, for interference in writ jurisdiction and the petition be dismissed.

7. Since the petitioner is appearing in person, with the assistance of the learned A.P.P. I have perused the entire petition and the annexures thereto, including deposition of P.W.1 Dilip Bhatkar and P.W.3, Pooja.

8. The date of the incident is 14th April

1993. The time of the incident is about 10.30 a.m. to 11.00 a.m. The petitioner accused came at the site and started throwing stones on windows of kitchen of the complainant's bungalow and started abusing and making gestures is the allegation. The wife of P.W.1 conveyed this to P.W.1 on telephone. P.W.1 immediately reached the spot. He confronted the petitioner accused. He enquired as to why petitioner was hurling abuses and pelting stones. The petitioner instead of answering anything, according to P.W.1, first abused him and, thereafter, hit a steel rod or pipe on the head of P.W.1 and caused bleeding injury. Colleagues of P.W.1 Jimmy Jacob and one Mahadik took away the petitioner and, thereafter, P.W.1 sent Bhondwalkar to call police. Within 5 to 10 minutes, thereafter, the wife of P.W.1 and Pooja Pethe appeared on the spot. P.W.1 was taken to police station and later on by intervention of police to civil hospital for treatment. He lodged a complaint

and that is how investigations commenced, recoveries effected and charge sheet filed.

9. The matter, thereafter, was placed before the Chief Judicial Magistrate to frame charges. The same was read over to the accused. The accused did not plead guilty. His defence is of total denial. He also alleged that the complainant was beating and assaulting him. The accused did not adduce any evidence.

10. On behalf of prosecution, four witnesses were examined and opportunity was given to the accused to cross examine them.

11. P.W.1 is Dilip Ramchandra Bhatkar. His wife had conveyed to him the message that the petitioner accused is throwing stones on the kitchen window, uttering abuses and making gestures. Thereupon, the P.W.1 reached the site. The accused was present there. He enquired as to

why the accused was present and throwing stones. His version is, immediately accused struck a blow of steel rod/pipe on his head and caused bleeding injury. His colleagues Jimmy Jacob and Mahadik took away the iron rod from the accused. P.W.1, then deposes that one Mr.Bhondwalkar was asked to report to Police station. Wife of P.W.1 and one Puja Pethe and others appeared at the spot. Police also reached and he was taken to police station and thereafter to the civil hospital for treatment. He proved the contents of the complaint so also his signature and identified seized articles including iron rod/pipe. The petitioner accused cross examined him and the only answer he could elicit from him in his cross examination is that the P.W.1 was unaware of the time of incident. The suggestion that there were no injuries but only the portion below the eye turned black was denied. The cross examination in paras 4 to 6 and its effect on the outcome of the proceedings has been noted by the learned

Chief Judicial Magistrate.

12. The P.W.2 is one Gajanan Bhondwalkar. He has confirmed petitioner's presence at the spot. He has also identified the articles. As far as his cross examination is concerned, it centres around the location of the house and the window. The question is with regard to the location of other house. Witness admits that there are no blood stains on the spot. The suggestion that the complainant is the employer of this witness and, therefore, he is deposing in his favour has been denied.

13. P.W.3 is Pooja Prasad Pethe. She has confirmed the incident and the presence of the accused so also the weapon used.

14. In her cross examination, petitioner accused suggested that on the same day one Vijay Pethe accompanied Dilip and others for beating

the petitioner, the answer was in the negative. She also has been asked about the location of the house. She has been unable to give particulars of the abuses hurled and uttered by petitioner. She denies the suggestion of previous enmity and disputes on account of boundaries. She has also given reference of some chapter case and thereafter specifically denied that she reached the spot after 5 to 10 minutes of the incident.

15. P.W.4 is the concerned Police Officer.

16. P.W.5 is the Doctor who has given particulars of the injuries and proved the certificate issued.

17. After the evidence was led, the Judicial Magistrate, F.C. Ratnagari heard oral submissions and has concluded that the petitioner accused was intending to commit offence under charge. The abuses, however, were not proved.

He proceeded to convict the petitioner for offences punishable under section 324 and 504 of I.P.C. and, thereafter, considering the age of petitioner, imposed a sentence of fine of Rs.50/- and in default to suffer simple imprisonment of 10 days.

18. This judgement and order was delivered on 5th April 1997.

19. Petitioner carried the matter in revision before the Additional Sessions Judge and the learned Additional Sessions Judge concurred with the findings and conclusions of Judicial Magistrate, F.C. He held that considering the materials placed before the learned J.M.F.C. his conclusion that the petitioner is guilty of offences punishable under section 324 and 506 of I.P.C. cannot be termed as perverse. He noted the limits of revisional jurisdiction. He also noted that there is no appeal in the present case

against the Judgement of conviction. However, since the petitioner was appearing in person and with a view to satisfy himself that there is no failure of justice, learned Additional Sessions Judge perused the record and also discussed the material that was produced before the trial court. He concluded that prosecution evidence read as a whole proves the offences alleged. In such circumstances, he held that case for interference in the revisional jurisdiction is not made out and proceeded to dismiss Revision Application.

20. Against the concurrent findings and conclusions the present petition under Article 227 of the Constitution of India has been filed.

21. I have noted the contentions before the trial court as well as before me. The Courts below were right in concluding that the petitioner has on the relevant date gone at the

site and, thereafter, assaulted complainant Dilip by steel rod/pipe which is a dangerous weapon. That he has threatened to kill the complainant Dilip is also proved. The trial court as well as revisional court has relied upon the evidence of complainant, Pooja Pethe and Doctor, P.W.5. It has been held that both complainant - Dilip and Pooja have narrated the incident and furnished relevant details. They have also identified the weapon.

22. After perusing these materials, I am satisfied that the conclusion that the petitioner does not dispute his presence and the incident so also the recovery of weapon used in the assault, is justified and well founded. Once the revisional court was satisfied that this is not a case where the petitioner has demonstrated any perversity or irregularity of such nature as would wholly vitiate the proceedings, then, the conclusion that revision application deserves to

be dismissed, cannot be faulted. The revisional court has held that no error of law or material irregularity occasioning failure of justice has been pointed out. On the other hand, the trial court, consistent with the materials produced, has rendered a finding of conviction and guilt of petitioner.

23. These very materials have been perused by me and in my view, in my limited jurisdiction, it is not permissible to re-appraise and re-appreciate the same and arrive at different conclusion. In the limited jurisdiction that is conferred upon this court, it is not permissible to try the matter as if I am sitting in appeal. Once, there is evidence to link the petitioner with the incident/crime, then, this is not a fit case for interference in writ jurisdiction. Petition dismissed. Rule discharged. C.C. expedited.

(S.C.Dharmadhikari, J)